X06-UWY-CV18-6046436-S ET AL.	**:**	**APPELLATE COURT**
ERICA LAFFERTY ET AL.	**:**	**STATE OF CONNECTICUT**
V.	**:**	
ALEX EMRIC JONES ET AL.	**:**	**JANUARY 20, 2023**
. . . . . .	**.**	**. . . . . .**
NO: X06-UWY-CV18-6046437-S	**:**	**APPELLATE COURT**
WILLIAM SHERLACH	**:**	**STATE OF CONNECTICUT**
V.	**:**	
ALEX EMRIC JONES	**:**	**JANUARY 20, 2023**
. . . . . .	**.**	**. . . . . .**
NO: X06-UWY-CV18-6046438-S	**:**	**APPELLATE COURT**
WILLIAM SHERLACH	**:**	**STATE OF CONNECTICUT**
V.	**:**	
ALEX EMRIC JONES	**:**	**JANUARY 20, 2023**

PRACTICE BOOK §66-6 MOTION FOR REVIEW OF TRIAL COURT ORDER DENYING A STAY DURING APPEAL OR WRIT OF ERROR PROCEEDINGS

The Respondent, Attorney Norman A. Pattis, in accordance with this Court's January 12, 2023 order and Practice Book § 66-6, respectfully moves this Court for an order reversing the trial court's (*Bellis, J.*) denial of his Motion for Stay During Appeal or Writ of Error Proceedings, issued on Jan. 11, 2023.

I. BRIEF HISTORY OF THE CASE

The Respondent represented the defendants in the underlying consolidated trial court cases in the Complex Litigation Docket of the Superior Court at the Waterbury Judicial District. He litigated the cases through trial and verdict, which is presently on appeal in this Court where it is docketed under A.C. 46131.

The trial court, on Aug. 4, 2022, issued to the Respondent an Order to Show Cause to address whether he violated the Rules of Professional Conduct concerning the disclosure of confidential records to other attorneys who represented his clients in related matters. A concurrent Order to Show Cause was issued as to Attorney Reynal. Attorney Pattis moved to disqualify judge Bellis from presiding over the disciplinary hearing in

which she was essentially the complaining party as well as adjudicator, but the court denied that motion in a conclusory order that cited caselaw but provided no analysis. Following consolidated evidentiary hearings on August 10, 17, and 25, and briefs, the trial court, in a decision issued on Jan. 5, 2023, found that the Respondent violated Rules of Professional Conduct 1.1, 1.15(b), 3.4(3), 5.1(b), 5.1(c) and 8.4(4), and ordered the Respondent suspended immediately from the practice of law in Connecticut for six months. In the concurrent proceeding against Reynal, the court did not impose discipline.

On Jan. 6, the Respondent, moved the trial court for a stay of its suspension order during appeal or writ of error proceedings. The trial court sustained the objection to that motion by Disciplinary Counsel and denied the stay on Jan. 11, 2023.

II. SPECIFIC FACTS

Attorney Pattis has been admitted to practice law in Connecticut since November 1993 and had no history of discipline prior to the suspension at issue. He is a principal of the firm of Pattis and Smith LLC in New Haven, a busy and active law firm representing hundreds of clients, many of whom have complex criminal cases and who rely on him for advice, counsel and representation. Presently, Attorney Pattis is on trial in federal court in Washington D.C. in a significant case arising out of the January 6, 2021 alleged insurrection at the U.S. Capitol, *United States of America v. Ethan Nordean, Et Al.*, 21-CR-175 (TJK), in which he represents Joseph Biggs, one of the alleged ringleaders of an alleged seditious conspiracy. That Court is awaiting a final determination of the issue of a stay before ruling on whether Pattis can remain in that case. Attorney Pattis is also counsel for the Defendant Alex Jones and other defendants in the cases underlying this disciplinary action wherein a historic judgment of $1.4 billion

was entered against his clients, which his clients have appealed and in which he possesses not only crucial knowledge of the underlying case but also the trust of his clients. The Respondent has served and filed a Writ of Error challenging the trial court's decision to suspend his law license on due process and other grounds, in addition to this Motion for Review.

III. LEGAL GROUNDS

Stay rulings are not reviewable by appeal, and §66-6 provides the sole means of review for stay rulings. *Clark v. Clark,* 150 Conn. App. 551, 575-76 (2014). Stay decisions are reviewed under an abuse of discretion standard. *In re Emma F.,* 315 Conn. 414, 422 n.10 (2015). Where the trial court has discretion to act, it is improper for the trial court to fail to exercise its discretion. *Costello v. Goldstein & Peck, P.C.,* 321 Conn 244, 256 (2016). Where the court does exercise it discretion, an appellate court's review is limited to the questions of whether the court correctly applied the law and whether it could reasonably have concluded as it did. *State v. Callahan,* 108 Conn. App. 605, 611 (2008). A trial court's findings of fact will be overturned upon a showing that they were clearly erroneous. *Id.* A reviewing court will reverse the lower court where an abuse of discretion is manifest or an injustice is apparent. *Id.;* See also *Lopez v. Board of Educ. of City of Bridgeport,* 310 Conn 576, 586 n.11 (2013) (trial court, *Bellis, J.,* reversed for having terminated an automatic stay); *Moshier v. Goodnow,* 217 Conn. 303, 305 n.4 (1991) (denial of stay reversed in tax collection dispute). Here, the court abused its discretion by incorrectly applying the law, and it could not have reasonably concluded as it did given that its factual findings were clearly erroneous. The resulting abuse of discretion is manifest and the injustice readily apparent.

IV. ARGUMENT

The Respondent's arguments regarding the trial court's abuse of discretion are twofold. As an initial matter, the trial court abused its discretion *per se* by failing to exercise such discretion in any meaningful way. Its order denying the stay simply reads "The respondent's motion to stay the January 5, 2023 order, during the appeals of the underlying cases or writ of error proceedings, is denied, the court having considered the factors as set forth in *Griffin Hosp. v. Commission on Hospitals and Health Care,* 196 Conn. 451, 457-58, 493 A. 2d 229, 233-34 (1985). Disciplinary Counsel's objection to the motion to stay is sustained." Plainly stated, these two sentences do not constitute an exercise of discretion so much as they tacitly confirm an abdication of the duty to exercise it. The only hint of exercised discretion comes in the form of the talismanic "having considered the factors..." language, but only the darkest legal alchemy could vault that form over function and call it substantial performance, let alone justice. Where, as here, the trial court has discretion to act, it is improper for the trial court to fail to exercise its discretion, as it did here. *Costello v. Goldstein & Peck, P.C.,* 321 Conn 244, 256 (2016). Abdication of duty is no substitute for its exercise, and this Court should reverse on that basis alone.

In any event, even if this Court should disagree and determine that the trial court minimally exercised its discretion when it denied the stay, it must nonetheless find that the trial court abused that discretion, as it failed to exercise it in accordance with both Practice Book §61-12 and controlling caselaw, which required the court to balance the equities as elucidated in *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 493 (1985). While approving a general 'balancing of the equities test' as the

minimum standard, *Griffin* also recites a list of non-exclusive factors drawn from Federal and state jurisprudence that a court should consider: the likely outcome on appeal, irreparable prospective harm from the enforcement of the judgment, the effect upon the non-moving parties, and the public interest involved. *Id.*, 456-57. Here, despite the trial court's cursory, conclusory order to the contrary, a proper application of the law demonstrates that the equities--all of them-- clearly weighed heavily in favor of a stay pending the resolution of the underlying appeals and Writ of Error.

First, as to the likelihood of success, the Respondent has a strong case on appeal. In what may be a case of first impression in Connecticut, he raises significant issues of denial of due process and disproportionate punishment. Although our Courts have upheld the Superior Court's inherent authority to discipline attorneys for just cause, the Respondent's case is not one authorized under Practice Book §2-45 in which the conduct occurred in the presence of the trial court, nor was it initiated through a motion by an opposing party, drawing into question the trial court's jurisdiction, process, and impartiality. Indeed, the trial court learned of the possible violation through media reports and issued an order to show cause *sua sponte*. Then, with the underlying matters scheduled for trial before it, the court did not refer the potential disciplinary matter to another judge or to a grievance panel (having expressed her dissatisfaction with grievance panel's earlier exoneration of Pattis in an instance when she *had* followed the grievance procedures), but instead heard it herself after denying Pattis's motion to recuse her. Following those proceedings, the same judge tried the case to verdict with the Respondent representing the defendants while potential discipline dangled overhead like a sword of Damocles; apparently, the trial court did not feel that the Respondent posed

so great a threat as to require an immediate suspension that might delay trial and frustrate her docket. Rather, the suspension came only after the trial concluded, judgment entered, and the appeal was filed.

Related due process concerns arise from the fact that the Court included in her sanctions analysis the fact that Pattis invoked his Fifth Amendment privilege against self-incrimination during the Court's investigation and hearing, a right clearly granted him by Spevack v. Klein, 385 U.S. 511 (1967), because the improper disclosure of private medical records can have criminal consequences under both state and federal laws. Though the record is clear that Attorney Pattis self-reported and took responsibility for having transmitted the records though it was another lawyer in his office who had actually done so, the Court, as discussed below, treated him differently than Reynal because he took the 5th while Reynal testified. Disciplinary proceedings are quasi criminal in nature, *Burton v. Mottolese*, 267 Conn. at 19, citing to *Kucej v. Statewide Grievance Committee,* 239 Conn. 449, 462, cert. denied, 520 U.S. 1276 (1997), and while an adverse inference might be allowable in a civil case, whether the Court here could do so, and whether such inference would satisfy the clear and convincing evidence standard applicable here, are important questions that Attorney Pattis should be able to litigate in the Writ of Error.

Moreover, as to the proportionality of the discipline ordered, a six-month suspension is an unprecedented punishment that is disproportionate by orders of magnitude for the misconduct found by the trial court, both under the ABA Standards for Imposing Lawyer Sanctions, approved by our Supreme Court in *Burton v. Mottolese,* 267 Conn. 1, Fn. 50 (2003), and with regard to the law of this case insofar as similar actors

and misconduct is concerned. Per the ABA model standards, 6.2, Abuse of the Legal Process, dealing with negligent failure to comply with a court order is probably the most salient here, as Standards 6.23 and 6.24 provide, *inter alia*, that reprimand or admonition are generally appropriate "when a lawyer negligently fails to comply with a court order..." or "engages in an isolated instance of negligence in complying with a court order...", respectively. All of the evidence before the court leads to the clear finding that Attorney Pattis' conduct was negligent. He forwarded the case file to Attorney Lee, whom the Defendants had hired to file a bankruptcy, a proceeding where Lee would, immediately upon filing, be *counsel of record*. It did not occur to him that this was improper or a violation of the court's order. When he learned that Attorney Lee had forwarded the file to counsel for his clients in Texas, Attorney Reynal, who had then forwarded it to counsel for the Texas plaintiffs, he immediately contacted the Connecticut plaintiffs' attorney and notified him of inadvertent transmittal. None of the Texas attorneys looked at the plaintiffs' records or disseminated them beyond the control group of three lawyers, and the records were deleted by all of the Texas lawyers. No harm occurred. Arguably, Standard 6.24 would be applicable, but because Connecticut's disciplinary process generally does not include admonitions, viz. Practice Book § 2-37, and assuming arguendo that even the brief and innocuous transmittal of the plaintiffs' records to three attorneys who did not look at them was "potential" harm, even under standard 6.23 the proper discipline would be a reprimand. Furthermore, Section 3.0 of the Standards provides that "in imposing a sanction after a finding of lawyer misconduct, a court should consider both aggravating and mitigating factors." Of the ten aggravating factors listed by the ABA, not a single one is present in this case; of the thirteen mitigating factors listed, nearly all are present here:

Pattis has no prior record of discipline, possessed no dishonest or selfish motive in making the unauthorized disclosure, made timely good faith efforts to rectify the situation once he recognized his error, displayed remorse and acknowledged that the responsibility rested on his shoulders, was under time pressure when the unauthorized disclosure was made to the bankruptcy lawyer who was to be of record in that matter and who requested the materials, and took interim steps to address this single instance of misconduct and prevent it from recurring.

At the same time, in this very same case Attorney Reynal was not disciplined at all for conduct that was essentially identical to the Respondent's. Similarly, the trial court also issued a mere reprimand for more deliberate, egregious misconduct in this case for an earlier incident involving Attorney Wolman. Moreover, the trial court and our Courts have vast experience meting out discipline, and the Respondent's discipline is incongruent with relevant caselaw. See *Office of Chief Disciplinary Counsel v. Cramer,* No. CV-19-6085504-S, (*Bellis,* J.) (Violations of rules 1.1, 3.4(3), 8.1(2) and 8.4(4), and Practice Book §2-32(a)(1), resulting in a reprimand where attorney failed to defend a case resulting in a $56,204.55 default judgment against the client and later failed to respond to grievance or appear for his hearing); *D'Attilo v. Statewide Grievance Committee Et Al.,* 329 Conn. 624 (2018) (Attorneys Koskoff and Nastri reprimanded after a finding of probable cause for failing to keep billing records for $600,000 in litigation expenses and failing to explain a provision in the retainer agreement that increased the attorneys' fee from approximately $2,660,000 to approximately $7,000,000, to their clients' detriment). Again, the Respondent is likely to succeed on this record, in light of the grave due process

concerns and the disparity between the misconduct and the punishment meted out, and this equity therefore weighs in favor of a stay.

Next, concerning the irreparability of the injury the Respondent has suffered and would continue to suffer from immediate suspension, that harm is easily calculable, and its weight grows by the day like so much interest: an immediate six month suspension vitiates the Respondent's appellate review, as it would almost certainly be fully served before resolution of his Writ of Error and the underlying appeal; Pattis has taken down his blog page and letters of notice have gone out to all of his clients; and the punishment has already gained national attention and Pattis has had a clean disciplinary record forever lost. In its objection to a stay, Disciplinary Counsel acknowledged the harm imposed on Pattis, but argued that such is the lot for all attorneys who are suspended for less than two or three years. In doing so, however, it made no distinction between those cases where imminent harm qualifies the Respondent for an interim suspension under P.B. §2-42, and those where the harm was isolated and potential, as is the case before this Court. That is a distinction with a difference, as this is not a case where there is any threat of imminent harm claimed, such that the punishment here is intended to protect the Court alone, an aim which a stay would not impugn.

Undeniably, the effect of denying a stay would harm other parties to the proceeding: the defendants in the underlying civil case and its appeal would be effectively denied their counsel of choice, and the plaintiffs would certainly suffer further delay if the defendants should be forced to seek other counsel who would then have to be brought up to speed in a matter that can only be described as sui generis as to both

its factual and procedural complexity. Such harm is needless and preventable, as much of it would be ameliorated by the stay sought by Pattis, and this equity therefore weighs in favor of a stay.

Finally, as to the public interest involved, the judiciary's interest in administering and imposing professional discipline-- not as punishment, but rather to enforce its standards and norms of attorney conduct for the protection of the public, the faith of the public in the court and the guidance of the legal profession-- would not be hindered or interfered with by staying the discipline order and allowing the orderly disposition of the Writ of Error and appeals of the underlying cases, as well as any arrangements Pattis may need to make for his other clients and cases, including the federal trial in which he is presently involved. There is a six year statute of limitations on lawyer discipline cases, and this is not a P.B. §2-42 interim suspension case, such that time is not of the essence to protect clients from irreparable harm nor to preserve the viability of the action against Pattis. This equity, therefore, also weighs in favor of a stay.

V. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court issue an immediate stay of the trial court's January 5 judgment which is to remain in effect until the resolution of the Appeal and Writ of Error Proceedings.

Respectfully Submitted,
Norman A. Pattis, Respondent

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CERTIFICATION

The undersigned hereby certifies the following:

That the foregoing has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided, pursuant to PB § 67-2(b);

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And that the foregoing has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law, pursuant to PB § 67-2(i)(3); and

That the foregoing complies with all other applicable provisions of the Practice Book.

That counsel has complied with all other applicable provisions of the Practice Book.

/s/ Kevin M. Smith